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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/803,318

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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/803,318 | <b>Applicant(s)</b><br>DAVIS ET AL. |  |
|                              | <b>Examiner</b><br>MARC A. PATTERSON | <b>Art Unit</b><br>1794             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23,24 and 26-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23,24 and 26-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections – 35 USC § 103(a)***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23, 29 - 30, 44 - 46 and 51 - 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezaki et al (U.S. Patent No. 5,520,972) in view of Lue et al (U.S. Patent No. 6,476,171).

With regard to Claims 23 and 51 - 52, Ezaki et al disclose a film comprising at least three layers (column 9, lines 16 - 17) comprising an inner and outer layer comprising 60 - 90% wt.% LDPE and 40 - 10 wt.% HDPE (column 2, lines 53 - 65) and an intermediate layer, comprising 5 - 15 wt.% HDPE and LLDPE, therefore 85 - 95 wt.% LLDPE (column 2, lines 53 - 65). Ezaki et al fail to disclose A/B/A structure comprising a core layer comprising 60 - 90% wt.% LDPE and 40 - 10 wt.% HDPE (column 2, lines 53 - 65) and skin layers comprising 5 - 15 wt.% HDPE and LLDPE. However, because Ezaki et al disclose at least three layers, it would have been obvious for one of ordinary skill in the art to have provided for six layers comprising two of the film structures laminated to each other, therefore an A/B/A structure comprising a core layer comprising 60 - 90% wt.% LDPE and 40 - 10 wt.% HDPE (column 2, lines 53 - 65) and skin layers, therefore outer layers, comprising 5 - 15 wt.% HDPE and LLDPE. Ezaki et al also fail to disclose a LLDPE that is a metallocene LLDPE.

Lue et al teach a LLDPE (column 6, line 16) that is a metallocene LLDPE (column 5, lines 56 - 67) for the purpose of obtaining a film having a good balance of strength and stiffness (column 3, lines 31 - 40). It therefore would have been obvious for one of ordinary skill in the art to have provided for a metallocene LLDPE in Ezaki et al in order to provide a film having a good balance of strength and stiffness as taught by Lue et al. With regard to Claims 29 - 30 and 44 - 46, when formed into a coextruded ABA structure having a thickness of less than 50 microns, the film therefore has a 1% secant modulus MD of at least 500 mPa and 1% secant modulus TD of at least 600 mPa and a difference in Gloss 20 and 60 of 2% or less.

3. Claims 24, 26 - 28, 31 - 43 and 47 - 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ezaki et al (U.S. Patent No. 5,520,972) in view of Lue et al (U.S. Patent No. 6,476,171) and further in view of Lind et al (U.S. Patent Publication No. 2001/0003624).

Ezaki et al and Lue et al disclose a polyethylene film comprising skin layers as discussed above. With regard to Claim 24, Ezaki et al and Lue et al fail to disclose a skin layer having a blend of LLDPE and an ethylene - alpha olefin copolymer and having a density of 0.940 g/cm<sup>3</sup>.

Lind et al teach a film having an ethylene - alpha olefin copolymer having a density of 0.940 g/cm<sup>3</sup> (paragraph 0020) for the purpose of obtaining a film for the wrapping of a group of items (paragraph 0004). One of ordinary skill in the art would therefore have recognized the advantage of providing for the film of Ezaki et al and Lue et al, which comprises a film, depending on the desired use of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for an ethylene - alpha olefin copolymer

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having a density of  $0.940 \text{ g/cm}^3$  in Ezaki et al and Lue et al in order to obtain a film for the wrapping of a group of items as taught by Lind et al.

With regard to Claims 26, 31 - 33, 37 - 39, 43 and 47, the metallocene polyethylene disclosed by Lue et al is linear low density polyethylene, as stated above.

With regard to Claims 27 and 40 - 41, Lind et al disclose HDPE having a density of 0.960 to  $0.965 \text{ g/cm}^3$  (paragraph 0020).

With regard to Claims 28, 38 and 42, Lind et al disclose HDPE having a density of 0.925 to  $0.935 \text{ g/cm}^3$  (paragraph 0020).

With regard to Claims 34 and 48, the film disclosed by Lind et al is coextruded (paragraph 0056) and heat - shrinkable (paragraph 0064).

With regard to Claims 35 and 49 - 50, Lind et al disclose a group of items wrapped by the film (pieces of meat; paragraph 0004); Lind et al therefore disclose a collation shrink wrapped structure.

With regard to Claim 36, Lind discloses the interchangeable use of the film as a packaging film or as a packaging bag (paragraph 0003) and the film disclosed by Lind is heat shrinkable (paragraph 0002); Lind therefore discloses a process of making a packaged structure comprising the wrapping of a package comprising the bag with the film and heating the wrapped package to shrink the film and applying a holding force.

ANSWERS TO APPLICANT'S ARGUMENTS

4. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 23, 29 - 30, 44 - 46 and 51 - 52 as being unpatentable over Ezaki et al (U.S. Patent No. 5,520,972) in view of Lue et al (U.S. Patent No. 6,476,171) and 35 U.S.C. 103(a) rejection of Claims 24, 26 - 28, 31 - 43 and 47 - 50 as being unpatentable over Ezaki et al (U.S. Patent No. 5,520,972) in view of Lue et al (U.S. Patent No. 6,476,171) and further in view of Lind et al (U.S. Patent Publication No. 2001/0003624), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 7 of the remarks dated January 11, 2010, that amended claims clarify that the claimed skin layers are surface layers, and that the clarification is also in paragraph 0056 of the specification.

However, although the claimed aspect of the layers being the 'outer layers' clarifies that the layers are outer layers of the A/B/A structure, the claimed invention is directed to a film 'comprising' the A/B/A structure; the term 'outer' therefore is not limited to surface layers.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794